

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TYREE SKIPPER,

Defendant.

Case No. 1:05-CR-479

Case No. 1:15-CV-2531

OPINION & ORDER  
[Resolving Doc. [50](#)]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Defendant Tyree Skipper petitions for habeas corpus relief under 28 U.S.C. § 2255. He argues that he no longer qualifies as a career offender and was improperly sentenced under the [United States Sentencing Guideline § 4B1.1; 1.2\(a\)](#).<sup>1</sup> The Supreme Court's recent opinion in [Beckles v. United States](#)<sup>2</sup> forecloses his argument.

Defendant Skipper's argument centers on the relationship between the Guidelines and the Armed Career Criminals Act.

On June 26, 2015, the Supreme Court gave an opinion in *Johnson v. United States*, holding that the residual clause of the Armed Career Criminals Act was unconstitutionally vague.<sup>3</sup> If a sentencing court imposed an increased sentence based on felonies that qualified under the residual clause alone, that sentence violated a criminal defendant's constitutional right to due process.<sup>4</sup>

<sup>1</sup> Doc. [50](#). The Government opposes. Doc. [56](#). Defendant Skipper replied. Doc. [57](#).

<sup>2</sup> [No. 15-8544, 2017 WL 855781 \(U.S. Mar. 6, 2017\)](#).

<sup>3</sup> [U.S. , 135 S. Ct. 2551 \(2015\)](#).

<sup>4</sup> *Id.*

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A criminal defendant sentenced under the ACCA residual clause can collaterally challenge his ACCA affected sentence in a § 2255 habeas proceeding.<sup>5</sup>

The Guidelines' career offender provision defines "crime of violence" using the same language ruled unconstitutional in *Johnson*.<sup>6</sup> Therefore, since *Johnson*, many criminal defendants sentenced under the Guidelines' career offender provision have argued that *Johnson*'s holding should also apply retroactively to Guidelines cases.

In *Beckles*, the Supreme Court rejected this argument. There, Petitioner argued that because the Court's *Johnson* opinion held "that the identically worded residual clause in the Armed Career Criminal Act . . . was unconstitutionally vague . . . the Guidelines' residual clause is also void for vagueness."<sup>7</sup> The Court held that because of the Guidelines' advisory nature, they "are not subject to vagueness challenges under the Due Process Clause."<sup>8</sup>

The Supreme Court's decision dictates the outcome of *Beckles*-dependant cases pending across the federal courts. Accordingly, this Court **DENIES** Defendant Skipper's § 2255 petition.

IT IS SO ORDERED.

Dated: March 15, 2017

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>5</sup> *Welch v. United States*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 1257, 1265 (2016).

<sup>6</sup> See *United States Sentencing Guideline* § 4B1.2(a) (emphasis added).

<sup>7</sup> No. 15-8544, 2017 WL 855781, at \*3 (U.S. Mar. 6, 2017).

<sup>8</sup> *Id.*